

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 30 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of the Commission's)
Rules to Establish a Radio)
Astronomy Coordination Zone)
in Puerto Rico)

ET Docket No. 96-2
RM-8165

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF CENTENNIAL CELLULAR CORP.

Centennial Cellular Corp. ("Centennial"), by its attorneys, herein replies to the comments filed in response to the Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding.¹ Centennial is a publicly traded Delaware corporation primarily engaged in the provision of Commercial Mobile Radio Services ("CMRS"). In particular, Centennial, through subsidiaries and affiliates, provides cellular telecommunications service in 28 markets and is itself the licensee of a 30 MHz block of Personal Communications Service ("PCS") spectrum in the Puerto Rico-U.S. Virgin Islands Major Trading Area.²

In the Notice, the Commission proposes "to designate the Puerto Rican Islands as a 'Coordination Zone,' in which applicants for new or modified station facilities" operating in Parts 5, 21, 22, 23, 24, 25, 26, 73, 74, 78, 80, 87, 90, 94, 95, and 97, "would

¹FCC 96-12 (released February 8, 1996).

²Centennial, through its subsidiaries and affiliates, has obtained authority to operate as a competitive access provider in Puerto Rico and also holds Specialized Mobile Radio ("SMR") authorizations.

be required to submit to the [Arecibo Radio Astronomy] Observatory the technical parameters of the proposed service or modification no later than the date the application is filed with the Commission."³

In proposing this requirement, the Commission concludes that "special effort should be given to aid [the Observatory] in its coordination tasks."⁴ While Centennial joins the Commission and various commenters in acknowledging the importance and uniqueness of the Observatory,⁵ as explained below, Centennial opposes that establishment of a radio astronomy coordination zone as outlined in the Notice.

A. The Proposal Applies Only To Applicants

As Centennial understands the Commission's proposal, the Observatory would have 20 days to review the technical parameters, determine whether the applicant's new or modified station facilities would cause interference to the Observatory and to file comments with the Commission.⁶ The Commission would consider the Observatory's comments and render a decision. As a PCS licensee in Puerto Rico under Part 24 of the Commission's rules, Centennial is included in the licensees affected by the Commission's proposal.

³Notice at ¶21.

⁴Id. at 18.

⁵See Id. at 18; see also Comments of the Puerto Rico Telephone Company at 1-2; Comments of P.R./V.I. Volunteer Frequency Coordinators, Inc. at 1; Comments of John P. Huchra, Center for Astrophysics at 1.

⁶Id. at ¶21.

By its own terms, the Commission's proposal applies only to "applicants." The Notice references "applicants for new or modified station facilities;" it sets the "date the application is filed with the Commission" as the deadline for submitting technical parameters to the Observatory; and proposes that the Observatory would have "20 days from the date of filing of an application"⁷ to offer comments or objections. Thus, as written, the proposal does not apply to the operation of base stations that require only notifications to the Commission or where no filing at all is required at the Commission in the ordinary course. Viewed in this light, Centennial does not object to the proposal.

Situations involving only notifications of facility construction and operation or no filing at all arise in the context of minor permissive changes⁸ or where blanket or market-based licensing has been established.⁹ For example, cellular licensees are required to notify the Commission only upon commencement and operation of cell sites whose service area boundaries ("SABs") establish or change the authorized cellular geographic service area

⁷Id. at ¶21. The Commission is very consistent in using the terms "applicant(s)" and "application(s)." See, e.g. Id. at ¶¶20, 21, 22, 23, 34 and 38.

⁸See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd 6513 (1994) at ¶¶22-28 (eliminating the requirement that licensees notify the Commission when they make "permissive" minor modifications to their stations or add new "internal" transmitters to existing systems).

⁹See 47 C.F.R. §24.11(b)

("CGSA").¹⁰ Moreover, if the SAB of the intended cell site is an "internal" cell and does not extend beyond the authorized CGSA, the licensee need not even notify the Commission before commencing operation.¹¹ In the case of broadband PCS licensees, the Commission issues a "blanket" license for the entire frequency block and will not accept applications for individual sites.¹²

In situations that involve the filing of a notification at the Commission, Centennial has no objection to providing the Observatory with a copy of the technical parameters of the new or modified facilities at the time the facilities are placed in operation. In the event that the Observatory is troubled by the interference potential of these facilities, it may discuss the matter informally with the operator and/or bring the matter to the Commission's attention. In either case licensees must be permitted to continue to operate their facilities. Under no circumstances should operation of these types of facilities be delayed pending the approval of the Observatory or, upon protest by the Observatory, by the Commission.

Moreover, to apply the proposal in situations where the Commission does not require any filing at all would result in delays and costs where none were contemplated. As correctly noted in comments submitted by Celpage, it is "unreasonable to require

¹⁰47 C.F.R. §§22.163(e) and 22.965(e).

¹¹Id. See also 47 C.F.R. §22.165(d) (paging).

¹²47 C.F.R. §§24.11(b) and 24.826(a). Narrowband PCS licenses are also issued on a "blanket" basis. 47 C.F.R. §24.426.

licensees to 'file' applications with the Observatory, when they are not required to do so with the Commission. The proposed 'Coordination Zone' will deprive [existing licensees] in Puerto Rico the benefits of the streamlined procedures that will be enjoyed by [licensees] elsewhere."¹³

Centennial's view is entirely consistent with the Commission's assurance, in the Notice, to radio licensees that it is

not proposing to afford the Observatory any additional interference protection nor [is it] altering the presumption that authorization of new radio communications services would best serve the public interest despite resultant increased interference to radioastronomical observations.¹⁴

In addition, it is consistent with the entire thrust of recent changes in the Commission's rules - - to expedite the operation of these types of facilities so that service can be promptly provided to the public.¹⁵ Finally, it is consistent with the Commission's efforts to encourage the provision of flexible service offerings such as wireless local loops by commercial mobile radio service providers.¹⁶

Any other result would have profound repercussions on the operation and competitive viability of the systems involved. This is especially true with respect to the dynamic and highly

¹³Comments of Celpage, Inc. ("Celpage") at 8-9.

¹⁴Notice at ¶19.

¹⁵See Comments of Celpage at 8-9.

¹⁶See In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-17 (rel. January 25, 1996) at ¶1.

competitive commercial mobile radio services. With today's technology, the time period between the securing of a site and the construction of a cell site is quite short. Changes take even less time if the action involves a modification to an existing facility. Licensees need the flexibility that the Commission's streamlined rules provide to build-out their systems and continue to improve service to subscribers in a timely manner. Thus, the Commission must make it clear that any rules adopted with respect to coordination with the Observatory do not impose any additional administrative delays in establishing new or modified facilities where no filings (or notifications only) are otherwise required.

B. The Proposal Is Overly Broad, Lacks Standards
And Is Unnecessary

The proposal is overly broad geographically, spectrally and methodologically. The proposal would affect Puerto Rico in its entirety. Viewed from a communications perspective, Puerto Rico is a communications market by itself, be it comprised of MSAs, BTAs, EAs or an MTA. The proposal affects all radio-based services regardless of whether or to what extent the Observatory utilizes the spectrum or whether the spectrum has been allocated for radio astronomy purposes.

The proposal also lacks any methodology or standard by which to uniformly evaluate the interference potential of a proposed radio operation. The Commission's proposal not to adopt any standards by which to evaluate whether an applicant's proposal would result in interference to the Observatory is impractical and

unrealistic. Without an agreed upon methodology to evaluate the interference potential, the prospect of disagreement between an applicant and the Observatory is heightened. Failure to resolve the matter informally will likely lead to the Observatory filing comments at the Commission. At this juncture, the Commission will have to address an interference claim without any standard. Not only will the applicant be delayed unnecessarily but, as noted in comments submitted by the Puerto Rico Telephone Company, the Commission risks making a decision which may well be rendered legally insufficient by the lack of a standard.¹⁷

Equally significant, the proposed Radio Astronomy Coordination Zone is unnecessary because the Observatory already has a "radio-free protection zone" by virtue of a Commonwealth of Puerto Rico law that prohibits "the operation of electrical equipment within a four-mile radius" of the Observatory.¹⁸ The record of this proceeding leaves the need to coordinate radio-based operations throughout the entirety of Puerto Rico highly suspect. In this regard, serious questions can be raised as to whether the Commission has adequately investigated a less severe geographic scope. Centennial has serious concerns that the Commission's

¹⁷See Comments of the Puerto Rico Telephone Company ("PRTC") at 8-11. It is telling to note that PRTC, a wholly-owned subsidiary of the Puerto Rico Telephone Authority and the only official representative of the Commonwealth of Puerto Rico to submit comments in this proceeding, opposes the formation of the proposed radio astronomy coordination zone.

¹⁸23 L.P.R.A. §214. See also Comments of PRTC at 3-4 ("The protected four mile radius (6.4 kilometers) covers 130 square kilometer, which comprises approximately 1.5 percent of Puerto Rico's total land area.").

proposal may well be interpreted as an abdication of its regulatory obligations and responsibilities.

C. The Proposal Lacks Fairness

Centennial and AT&T Communications, Inc. paid the United States government \$54.7 and \$56.9 million respectively for 30 MHz licenses to provide broadband PCS in Puerto Rico.¹⁹ It would be eminently unfair to change the ground rules for the operation of broadband PCS systems in Puerto Rico such that the Observatory, or any other party, would have the opportunity to review and comment on every new base station in the market. This is a burden imposed on no other group of PCS licensees, and could cause disastrous delays in the implementation of commercial service. In order to compete with the incumbent cellular operators in Puerto Rico, Centennial and all other new PCS licensees must rapidly built out their networks and bring service to the public expeditiously. To the extent that the proposed radio coordination zone will cause untold delays, the Commission's proposal threatens the viability of PCS in Puerto Rico.


Conclusion

There is uniform agreement that the work done at the Observatory is commendable. However, the Commission should not lose sight of the fact that existing and new licensees are also

¹⁹The bidding in the ongoing C-block PCS auction indicates that licensees will spend in excess of \$120 million (after accounting for a 25 percent bidding credit) for the same service area.

serving the public. Thus, a realistic approach to coordination with the Observatory is necessary. Because the proposed rules are overly broad and in fact unnecessary because the Observatory already enjoys a protection area, the Commission should decline to adopt the rules suggested in the Notice. In the alternative, fairness dictates that the Commission make it clear that any rules adopted do not impose any additional administrative delays in the institution of new or modified services or facilities where no filing (or notification only), is otherwise required.

Respectfully submitted,
CENTENNIAL CELLULAR CORP.

By: 
Richard Rubin
Steven N. Teplitz

Its Attorneys

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Sixth Floor
Washington, D.C. 20036
(202) 939-7900

April 30, 1996

CERTIFICATE OF SERVICE

I, Robert S. Childress, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Reply Comments Of Centennial Cellular Corp." was served this 30th day of April, 1996, via first class mail, postage prepaid, upon the following:

Francisco R. Montero, Esq.
Stephen J. Berman, Esq.
Fisher Wayland Cooper
Leader & Zaragoza, L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006

Joe D. Edge, Esq.
Mark F. Dever, Esq.
Tina M. Pidgeon, Esq.
Drinker Biddle & Reath
901 Fifteenth Street, N.W.
Washington, D.C. 20005

Frederick M. Joyce, Esq.
Christine McLaughlin, Esq.
Joyce & Jacobs, Attys. at Law, LLP
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036

Norman P. Leventhal, Esq.
Bernard A. Solnik
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Christopher D. Imlay, Esq.
Booth, Freret & Imlay
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

Terrence M. Baun
Dane E. Ericksen
Christopher D. Imlay, Esq.
Booth, Freret & Imlay
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

Victor Madera
Puerto Rico Amateur Radio League, Inc.
P.O. Box 191917
San Juan, Puerto Rico 00919

Victor Madera
P.R./V.I. Volunteer Frequency Coordinators, Inc.
P.O. Box 475
Mayaguez, Puerto Rico 00681

John P. Huchra
Center for Astrophysics
60 Garden Street
Cambridge, MA 02138

Dr. Angel Roman
Estado Libre Asociado de Puerto Rico
Gobierno Municipal de Arecibo
Oficina Del Alcalde
Apartado 1086
Arecibo, PR 00613

Morton S. Roberts
National Radio Astronomy Observatory
520 Edgemont Road
Charlottesville, VA 22903

Paul A. Vanden Bout
National Radio Astronomy Observatory
520 Edgemont Road
Charlottesville, VA 22903

Bruce Balick
Astronomy Department
P.O. Box 351580
Seattle, WA 98195

John M. Dickey
University of Minnesota
Department of Astronomy
116 Church Street, S.E.
Minneapolis, MN 55455

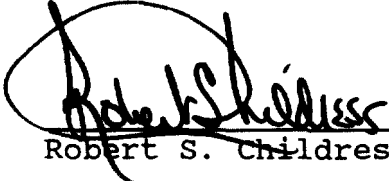
Christopher J. Reynolds
Reynolds and Manning, P.A.
Cornell University
Post Office Box 2809
Prince Frederick, MD 20678

Carl Heiles
University of California, Berkeley
Berkeley Astronomy Department
Berkeley, CA 94720

Robert L. Riemer
National Research Council
Commission on Physical Sciences,
Mathematics, and Applications
2101 Constitution Avenue, N.W.
Washington, D.C. 20418

Tomas E. Gergely
Electromagnetic Spectrum Manager
Division of Astronomical Sciences
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

Juan Luis Cuevas Castro
Estado Libre Asociado de Puerto Rico
Gobierno Municipal de Hatillo
Oficina Del Alcalde
Hatillo, Puerto Rico 00659



Robert S. Childress